

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 IRONDALE COMMUNITY ACTION NEIGHBORS
4 (ICAN),

5 Petitioner,

6 v.

7
8 JEFFERSON COUNTY,

9 Respondent.
10

CASE NOS. 03-2-0010, 04-02-0022
and 07-2-0012

ORDER ON COMPLIANCE

11
12 **I. SYNOPSIS**

13 This matter came before the Board at a Compliance Hearing on October 17, 2008¹ to
14 consider compliance with several items the Board previously identified were in need of
15 correction in the County's Comprehensive Plan regarding the Irondale/Port Hadlock Urban
16 Growth Area. The County addressed those items in Ordinance 07-0707-08 as described in
17 its compliance report. No objection to a finding of Compliance was filed. In this Order the
18 Board makes the following findings: (1) the County has cured the internal inconsistency
19 found in Policy 1.6; (2) the County now includes the necessary inventory, locations and
20 capacities of future water system facilities for the Irondale/Port Hadlock UGA in its plan; (3)
21 the County will adopt any amendments to the Public Utility District Plan (PUD) through its
22 comprehensive plan amendment process; and (4) the County's plan now contains
23 appropriate references to the 20 year planning period.
24
25
26

27 **II. RECENT PROCEDURAL HISTORY**

28 The Board found in its February 8, 2008 Compliance Order/Final Decision and Order that
29 Jefferson County complied with the Growth Management Act (GMA) except in three
30

31 ¹ The present compliance hearing was originally scheduled for August 27, 2008 but was continued first to
32 August 16, 2008 by agreement of the parties and then to October 17, 2008 due to the illness of Petitioner's attorney.

1 regards. The Board found, *inter alia*, that Policy 1.6, as amended, (allowing for cross-
2 designation of urban residential lands as commercial lands) did not comply with RCW
3 36.70A.110(2), and continued to allow an inconsistency within the plan pursuant to RCW
4 36.70A.130(1)(d). The Board also found that in removing provisions to adopt the PUD Water
5 System Plan by reference, the County's comprehensive plan no longer contained the
6 necessary inventory, locations, and capacities of future water system facilities and therefore
7 failed to comply with RCW 36.70A.070(3)(a), (b) and (c). In addition, the Board found that
8 the County's plan remained out of compliance with regard to the references to the
9 appropriate 20 year planning period and therefore did not comply with RCW 36.70A.070.²

11
12 The Board established a compliance schedule, and in accordance with that schedule the
13 County filed its Compliance Report on July 17, 2008.

14
15 The Board held a telephonic compliance hearing on October 17, 2008. Mark Johnsen
16 represented Jefferson County. Gerald Steel represented ICAN. All three Board members
17 attended; James McNamara presided.

19 III. BURDEN OF PROOF

20 After a board has entered a finding of non-compliance, the local jurisdiction is given a period
21 of time to adopt a legislative enactment to achieve compliance. RCW 36.70A.300(3)(b).
22 After the period for compliance has expired, the board is required to hold a hearing to
23 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and
24 (2). For purposes of board review of the comprehensive plans and development regulations
25 adopted by local governments in response to a non-compliance finding, the presumption of
26 validity applies and the burden is on the challenger to establish that the new adoption is
27 clearly erroneous. RCW 36.70A.320(1), (2) and (3).
28
29
30
31

32 ² Final Decision and Order on case no. 07-2-0012 and Order on Compliance on case nos. 03-2-0010 and 04-2-0022 (2/8/08) at 32.

1 In order to find the County's action clearly erroneous, the Board must be "left with the firm
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
4

5 Within the framework of state goals and requirements, the boards must grant deference to
6 local governments in how they plan for growth:

7 In recognition of the broad range of discretion that may be exercised by counties and
8 cities in how they plan for growth, consistent with the requirements and goals of this
9 chapter, the legislature intends for the boards to grant deference to the counties and
10 cities in how they plan for growth, consistent with the requirements and goals of this
11 chapter. Local comprehensive plans and development regulations require counties
12 and cities to balance priorities and options for action in full consideration of local
13 circumstances. The legislature finds that while this chapter requires local planning
14 to take place within a framework of state goals and requirements, the ultimate
15 burden and responsibility for planning, harmonizing the planning goals of this
16 chapter, and implementing a county's or city's future rests with that community.
17 RCW 36.70A.3201 (in part).

18 In sum, the burden is on the Petitioners to overcome the presumption of validity and
19 demonstrate that any action taken by the County is clearly erroneous in light of the goals
20 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
21 Where not clearly erroneous and thus within the framework of state goals and requirements,
22 the planning choices of the local government must be granted deference.

23 IV. ISSUE TO BE DISCUSSED

24 Whether the County has achieved compliance with regard to Policy 1.6 of its plan, the
25 necessary inventory, locations and capacities of its capital facilities plan, and the
26 appropriate references to the 20 year planning period, as previously determined to be out of
27 compliance with the GMA?
28

29 V. DISCUSSION OF THE ISSUES

30 Positions of the Parties

1 In its Compliance Report, the County relates that on July 7, 2008 the Jefferson County
2 Board of County Commissioners adopted Ordinance No. 07-0707-08³. The Ordinance
3 makes minor amendments to the Jefferson County Comprehensive Plan to address the
4 three remaining issues referenced in the Board's February 8, 2008 Order.
5

6 The County describes that it has now amended Policy 1.6 to provide that changes from
7 Urban Residential land to Urban Commercial land may only be accomplished upon a prior
8 County analysis of commercial needs and a modification of the Comprehensive Plan's land
9 use map and zoning map to remedy inconsistencies.⁴ In addition, Policy 1.6 now provides
10 that any such change must be reflected upon both the Comprehensive Plan map and the
11 zoning map.
12

13
14 The County also describes that it has amended the Urban Growth Area Element to re-adopt
15 the PUD Water System Plan by reference, and in doing so has removed the earlier
16 language suggesting that further amendments in the PUD Water System Plan could occur
17 without independent review and approval by the County through the Comprehensive Plan
18 amendment process.⁵
19

20 Finally, the County reports that it has removed the remaining references to the earlier 20-
21 year planning periods that the Board found non-compliant.⁶
22

23 In response, Petitioner has indicated that it does not have any objection to a finding of
24 compliance on the three issues addressed in this compliance proceeding.⁷
25

26 Board Discussion

27
28
29

30 ³ Jefferson County's Compliance Report at 3.

31 ⁴ Id.

32 ⁵ Id. at 4.

⁶ Id.

⁷ ICAN's Response to Jefferson County Compliance Report, at 1.

1 It is apparent that the County has responded appropriately to the Board's determinations
2 regarding the three areas of non-compliance identified in the Board's February 8, 2008
3 Final Decision and Order and Order on Compliance.
4

5 In its May 31, 2005 Final Decision and Order the Board found that UGA Policy 1.6 allowed
6 for cross-designation of urban residential lands as commercial lands and that there was no
7 estimate of how much acreage of the Urban Residential land use designation could be
8 designated at the owners' option. Therefore, the Board found that there was no link
9 between a need for such commercial lands and the cross designation option.
10

11 The County subsequently amended Policy 1.6 to add 3 additional criteria under which land
12 designated as Urban Residential on the UGA Zoning Map could be designated Urban
13 Commercial on the UGA Future Land Use Map. These included that the parcels have a
14 documented evidence of the need for transformation; that a capital facilities plan be in place
15 with the capacity to support the transfer from Urban Residential to Urban Commercial; and
16 the area rezoned be planned for sewer service within the 20 year planning horizon of the
17 Comprehensive Plan.
18
19

20 The Board found that allowing a change from residential to commercial without linking it to
21 an analysis of the commercial needs for the Irondale/Port Hadlock UGA or an analysis of
22 the impacts of these commercial needs did not comply with the GMA. This lack of analysis,
23 along with the lack of identification of the lands needed to meet these needs did not comply
24 with RCW 36.70A.110(2). Further, the Board found that this policy created an inconsistency
25 with the County's comprehensive plan and therefore did not comply with RCW
26 36.70A.130(1)(b) (now RCW 36.70A.130(1)(d)).⁸
27
28

29 Policy 1.6 was amended following the 2005 FDO and provided that the change from
30 residential to commercial must have adequate capital facilities to support it. That implies
31
32

⁸ Final Decision and Order/Compliance Order (May 2005) at 36 and 37.
ORDER ON COMPLIANCE
Case Nos. 03-2-0010, 04-2-0022 and 07-2-0012
October 22, 2008
Page 5 of 10

1 capital facilities needs would be analyzed to approve the change, but it still did not link
2 changes from residential to a commercial designation to a county analysis of commercial
3 needs. Therefore the Board concluded that it still caused an inconsistency in the
4 comprehensive plan.⁹
5

6 With Ordinance 07-0707-08 the County has now amended Policy 1.6 to provide that parcels
7 designated as Urban Residential on the UGA zoning map may be designated Urban
8 Commercial provided that "The parcel rezone request is presented and approved through
9 the annual comprehensive plan amendment process specified in JCC 18.45 JCC" and "The
10 parcel rezone request is consistent and compatible with the Comprehensive Plan and future
11 needs, documented through a commercial needs analysis."
12

13
14 In addition, Policy 1.6 now provides that "Any change from Urban Residential to Urban
15 Commercial shall be reflected on both the Comprehensive Plan Zoning Map and the
16 Jefferson County Zoning Map, as they are the same". With these changes, the County has
17 cured the deficiencies that previously existed in Policy 1.6.
18

19 The Board also finds that the County's capital facilities plan re-adopts the PUD Water
20 System Plan by reference. This amendment adds the necessary inventory, locations, and
21 capacities of future water system facilities needed to comply with RCW 36.70A.070(3)(a)(b)
22 and (c). Additionally, the County has removed the earlier language suggesting that further
23 amendments in the PUD Water System Plan could occur without independent review and
24 approval by the County through the Comprehensive Plan amendment process. This too
25 cures the area of noncompliance identified by the Board in our February, 2008 Order.
26
27

28 Finally, with regard to references to the appropriate 20 year planning period, this Board had
29 earlier held that the County must update or remove outdated references in order to achieve
30

31
32 ⁹ Final Decision and Order on case no. 07-2-0012 and Order on Compliance on case nos. 03-2-0010 and 04-2-0022 (2/8/08) at 24.

1 compliance with RCW 36.70A.070.¹⁰ A review of the Jefferson County Comprehensive Plan
2 demonstrates that the County has cured this area of non-compliance.

3
4 The County is to be congratulated for its fine work in addressing these areas of non-
5 compliance on schedule, and an order finding the County to be in compliance with regard to
6 these areas will be entered.

8 VI. FINDINGS OF FACT

9 1. Jefferson County is a county located west of the crest of the Cascade Mountains that is
10 required to plan pursuant to RCW 36.70A.040.

11 2. In the Board's May 2005 Final Decision and Order the Board determined that the
12 Irondale/Port Hadlock UGA and its implementing regulations did not comply with the GMA.
13 In subsequent rulings issued on May 30, 2006, May 6, 2007 and February 8, 2008, the
14 Board again found non-compliance and established a timeline by which legislative
15 measures needed to be taken to achieve compliance. The first task was a July 3, 2007 date
16 for implementing minor corrections referenced in Conclusions of Law G through I of the May
17 31, 2005 Final Decision and Order.

18 3. On July 7, 2008, the County adopted Ordinance 07-0707-08 to address the items
19 identified in Conclusions of Law G through I of the May 31, 2005 Final Decision and Order.

20 4. On July 17, 2008 the County filed its Compliance Report.

21 5. On September 22, 2008 Petitioner filed a timely response to the County's Report in which
22 it stated that it did not have any objection to a finding of compliance.

23 6. Ordinance 07-0707-08 amended Policy 1.6 to provide that changes from Urban
24 Residential land to Urban Commercial land may only be accomplished upon a prior County
25 analysis of commercial needs and a modification of the Comprehensive Plan's land use
26 map and zoning map to remedy inconsistencies. In addition, Policy 1.6 now provides that
27
28
29
30

31
32 ¹⁰ Id. at 29.

1 any such change must be reflected upon both the Comprehensive Plan map and the zoning
2 map.

3 7. The County has amended the Urban Growth Area Element of its Comprehensive Plan to
4 re-adopt the PUD Water System Plan by reference, and in doing so has added the
5 necessary inventory, locations, and capacities of future water system facilities.

6 8. The County has removed the earlier language suggesting that further amendments in the
7 PUD Water System Plan could occur without independent review and approval by the
8 County through the Comprehensive Plan amendment process.

9 9. The County has removed the remaining references to the earlier 20-year planning
10 periods that the Board found non-compliant.

11 10. Any Finding of Fact later determined to be a Conclusion of Law is hereby adopted as
12 such.
13

14 15 **VII. CONCLUSIONS OF LAW**

16 A. The Board has jurisdiction over the parties to this action.

17 B. The Board has jurisdiction over the subject matter of this action.

18 C. Petitioner ICAN has standing to raise the issues in this case.

19 D. Ordinance 07-0707-08 was adopted to achieve compliance with this Board's finding of
20 noncompliance in the Final Decision and Order on case no. 07-2-0012 and Order on
21 Compliance on case nos. 03-2-0010 and 04-2-0022 (2/8/08).

22 E. Policy 1.6 of the Jefferson County Comprehensive Plan no longer violates RCW
23 36.70A.110(2) or RCW 36.70A.130(1)(d).

24 F. By readopting the PUD Water System Plan by reference, the County's capital facilities
25 plan now complies with RCW 36.70A.070(3)(a), (b) and (c).

26 G. By removing incorrect references to the applicable 20 year planning period, the County
27 Comprehensive Plan now complies with RCW 36.70A.070 in this regard.

28 H. Any Conclusion of Law later determined to be a Finding of Fact is hereby adopted as
29 such.
30
31
32

1 **VIII. ORDER**

2 Based on the foregoing, the Board finds that Jefferson County has achieved compliance
3 with those areas determined to be non-compliant with the GMA in the Board's February 8,
4 2008 Final Decision and Order and Order on Compliance.

5
6 Entered this 22nd day of October 2008.

7
8 _____
9 James McNamara, Board Member

10
11 _____
12 Holly Gadbow, Board Member

13
14 _____
15 William Roehl, Board Member

16
17 Pursuant to RCW 36.70A.300 this is a final order of the Board.

18
19 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
20 of mailing of this Order to file a petition for reconsideration. The original and three
21 copies of a motion for reconsideration, together with any argument in support
22 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
23 original and three copies of the motion for reconsideration directly to the Board, with
24 a copy to all other parties of record. **Filing means actual receipt of the document at**
25 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing
26 of a motion for reconsideration is not a prerequisite for filing a petition for judicial
27 review.

28 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
29 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
30 judicial review may be instituted by filing a petition in superior court according to the
31 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
32 Enforcement. The petition for judicial review of this Order shall be filed with the
appropriate court and served on the Board, the Office of the Attorney General, and all
parties within thirty days after service of the final order, as provided in RCW
34.05.542. Service on the Board may be accomplished in person or by mail, but

1 service on the Board means actual receipt of the document at the Board office within
2 thirty days after service of the final order. A petition for judicial review may not be
3 served on the Board by fax or by electronic mail.

4 Service. This Order was served on you the day it was deposited in the United States
5 mail. RCW 34.05.010(19).
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32